



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

of ancient knowledge which is extant, and by dint of rumination to have filled his mind and saturated himself with the thoughts and feelings of the ancients.

To him they are not phantasms, but intimate associates. He lives with them in the isolated home of the tribe and enters into the mysterious communion with the domestic gods who still take part in the necessitudes of the family. A companion of the ancients, his remarks and allusions teem with disclosures of their character, life and habits, and open vistas into the world of antiquity. No modern mind concentrated in business could abound in maturer or more fertile suggestions about practical affairs than de Coulanges in the fecundity and ripeness of his reflection about prehistoric man. As a Frenchman, he does not forget the art of presentation: each chapter is pictured in itself, and represents a phase of thought reflected by one aspect of life, the variety and finish, the epigrammatic terseness of an artist. Successive chapters develop difficult though connected views which enlarge the tableau, and the epochs are rounded off to the completeness of miniature books. The introduction of Christianity and its effect upon ancient life appropriately terminate the series of revolutions which in the lapse of time the race has undergone in the expansion of thought.

JAMES PARSONS.

RECENT AMERICAN DECISIONS.

Supreme Court of the United States.

UNION MUTUAL LIFE INSURANCE CO. v. WILKINSON.

The assured, in a life policy, in reply to the question, had she ever had a serious personal injury, answered no. She had, ten years before, fallen from a tree. The criteria of a serious personal injury considered.

This is not to be determined exclusively by the impressions of the matter at the time, but its more or less prominent influence on the health, strength, and longevity of the party is to be taken into account, and the jury are to decide from these and the nature of the injury whether it was so serious as to make its non-disclosure avoid the policy.

Insurance companies who do business by agencies at a distance from their principal place of business are responsible for the acts of the agent within the

general scope of the business intrusted to his care, and no limitations of his authority will be binding on parties with whom he deals which are not brought to their knowledge.

Hence, when these agents, in soliciting insurance, undertake to prepare the application of the insured, or make any representations to the insured as to the character or effect of the statements of the application, they will be regarded, in doing so, as the agents of the insurance companies, and not of the insured.

This principle is rendered necessary by the manner in which these agents are sent over the country by such companies, and stimulated by them to exertions in effecting insurance, which often lead to a disregard of the true principles of insurance as well as fair dealing.

In such cases the insurers cannot protect themselves under instructions to their agents, that they are only agents for the purpose of receiving and transmitting the application and the premium.

Therefore, where the agent had inserted in the application for life insurance a representation of the age of the mother of the assured at the time of her death, which was untrue, but which the agent himself obtained from a third person, and inserted without the assent of the assured, it was the act of the company, and not of the assured, and did not invalidate the policy.

To permit verbal testimony to show how this was done by the agent does not contradict the written contract, though the application was signed by the party. It proceeds on the ground that it was not his statement, and that the insurance company, by the acts of their agent in the matter, are estopped to set up that it is the representation of the assured.

IN error to the Circuit Court of the United States for the District of Iowa.

The opinion of the court was delivered by

MILLER, J.—This was an action on a policy of insurance obtained by defendant in error on the life of his wife from the corporation which is here as plaintiff.

The making of the policy and the death of the wife being admitted, the defendant below assumed the burden of a defense, which rested on his wife from the falsehood of certain answers to questions found in the application of plaintiff.

By the terms of the policy it became void if any of those representations proved to be untrue. The plea of defendant sets up some ten or twelve of these responses as false, but the questions presented here relate to but two of these.

In answer to interrogatory No. 9, "Has the party ever had any serious illness, local disease, or personal injury; if so, of what nature, and at what age?" the parties answered "No."

In regard to this, defendant asserted that in the year 1862,

some five or six years before the application was made, and when the wife was about fourteen years old, she had been seriously injured by a fall from a tree.

Under a rule of practice in the state courts of Iowa, adopted by the Circuit Court of that district, the judge required the jury to respond to the following interrogatory:

"Did Malinda Jane Wilkinson (the wife), in the year 1862, receive a serious personal injury by falling from a tree?" to which they answered, "Yes; injured, not seriously."

As the defendant concedes that, to defeat the action, the injury must have been serious, the response of the jury would seem to be conclusive. But the counsel for defendant argue that the jury were misled in making this response by the instruction of the court on that subject, and by the further question which it propounded to them in regard to the same matter. This other question is thus stated in the record: "Were the effects of such fall temporary, and had these effects wholly passed away without influencing or affecting her subsequent health, or length of life, prior to the time when the application for insurance in this case was taken?" To this the jury answered, Yes.

And on this branch of the case the court said to the jury that, if the effects of the fall were temporary, and had entirely passed away before the application was taken, and if it did not affect her health or shorten her life, then the non-disclosure of the fall is no defense to the action. On the other hand, if the effects of the fall were not temporary, and remained when the application was taken, or if the fall affected the general health, or was so serious that it might affect the health or shorten life, that the non-disclosure would defeat recovery, although the failure to mention the fall was not intentional or fraudulent.

It is insisted by counsel for defendant that if the injury was considered serious *at the time*, it is one which must be mentioned in reply to the interrogatory, and that whether any further inquiry is expedient on the subject of its permanent influence on the health, is for the insurer to determine before making insurance. But there are grave and obvious difficulties in this construction. The accidents resulting in personal injuries,

which at the moment are considered by the parties serious, are so very numerous that it would be almost impossible for a person engaged in active life to recall them at the age of forty or fifty years; and if the failure to mention all such injuries must invalidate the policy, very few would be sustained where thorough inquiry is made into the history of the party whose life is the subject of insurance. There is, besides, the question of what is to be considered a serious injury at the time. If the party gets over it completely, without leaving any ill consequence, in a few days, it is clear that the serious aspect of the case was a mistake. Is it necessary to state the injury and explain the mistake to meet the requirements of the policy?

On the other hand, when the question arises, as in this case, on a trial, the jury, and not the insurer, must decide whether the injury was serious or not. In deciding this, are they to reject the evidence of the ultimate effect of the injury on the party's health, longevity, strength, and other similar considerations? This would be to leave out of view the essential purpose of the inquiry, and the very matters which would throw most light on the nature of the injury, with reference to its influence on the insurable character of the life proposed.

Looking, then, to the purpose for which the information is sought by the question, and to the difficulty of answering whether an injury was serious, in any other manner than by reference to its permanent or temporary influence on the health, strength and longevity of the party, we are of opinion that the court did not err in the criterion by which it directed the jury to decide the interrogatory propounded to them.—*Wilkinson v. Connecticut Mut. Life Ins. Co.*, 30 Iowa.

The other answer which defendant alleges to have been false is made to an inquiry as to the age of the mother at the time of her death, and the disease of which she died.

The application shows that it was answered that she died at forty of a fever. Evidence was given by defendant tending to prove that she died much younger of consumption. In avoidance of this plaintiff was permitted to prove that the agent of the insurance company, who took down the answers of the applicant and his wife to all the interroga-

tories, was told by both of them that they knew nothing about the cause of the mother's death or her age at the time; that the wife was too young to know or remember anything about it, and the husband had never known her. But that there was present, at the time the agent was taking the application, an old woman, who said she had knowledge on that subject, and that the agent questioned her for himself, and from what she told him he filled in the answer which is now alleged to be untrue, without its truth being affirmed or assented to by plaintiff or the wife. The jury find all this in their special verdict, and also find that the mother died at the age of twenty-three years, and did not die of consumption. The husband and wife had both been slaves, and it is found that the applicant did not know when the application was signed how the answer to this question had been filled in.

And on this subject the court instructed the jury that if the applicant did not know at what age her mother died, and did not state it, and declined to state it, and that her age was inserted by the agent upon statements made to him by others in answer to inquiries he made of them, and upon strength of his own judgment, based upon data thus obtained, it was no defense to the action to show that the agent was mistaken, and that the mother died at the age of twenty-three years.

To the introduction of the oral testimony regarding the action of the agent, and to the instructions of the court on that subject the defendant excepted; and assigns the ruling of the court as an error on the ground that it permitted the written contract to be contradicted and varied by parol testimony.

The great value of the rule of evidence here invoked cannot be easily overestimated. As a means of protecting those who are honest, accurate, and prudent in making their contracts, against fraud and false swearing, against carelessness and inaccuracy, by furnishing evidence of what was intended by the parties, which can always be produced without fear of change or liability to misconstruction, the rule merits the eulogies it has received. But experience has shown that in reference to these very matters the rule is not perfect. The written instrument does not always represent the intention of

both parties, and sometimes it fails to do so as to either; and where this has been the result of accident, or mistake, or fraud, the principle has been long recognized that under proper circumstances, and in an appropriate proceeding, the instrument may be set aside or reformed, as best suits the purposes of justice.

A rule of evidence adopted by the courts as a protection against fraud and false swearing would, as was said in regard to the analogous rule known as the statute of frauds, become the instrument of the very fraud it was intended to prevent if there did not exist some authority to correct the universality of its application. It is upon this principle that courts of equity proceed in giving the relief just indicated; and though the courts, in a common law action, may be more circumscribed in the freedom with which they inquire into the origin of written agreements, such an inquiry is not always forbidden by the mere fact that the party's name has been signed to the writing offered in evidence against him.

In the case before us a paper is offered in evidence against the plaintiff containing a representation concerning a matter material to the contract on which the suit is brought, and it is not denied that he signed the instrument, and that the representation is untrue. But the parol testimony makes it clear beyond a question that this party did not intend to make that representation when he signed the paper, and did not know he was doing so, and, in fact, had refused to make any statement on that subject. If the writing containing this representation had been prepared and signed by the plaintiff in his application for a policy of insurance on the life of his wife, and if the representation complained of had been inserted by himself, or by some one who was his agent alone in the matter, and forwarded to the principal office of the defendant corporation, and acted upon as true, by the officers of the company, it is easy to see that justice would authorize them to hold him to the truth of the statement, and that as they had no part in the mistake which he made, or in the making of the instrument which did not truly represent what he intended, he should not, after the event, be permitted to show his own mistake or carelessness to the prejudice of the corporation.

If, however, we suppose the party making the insurance to have been an individual, and to have been present when the application was signed, and soliciting the assured to make the contract of insurance, and that the insurer himself wrote out all these representations, and was told by the plaintiff and his wife that they knew nothing at all of this particular subject of inquiry, and that they refused to make any statement about it, and yet knowing all this, wrote the representation to suit himself, it is equally clear that for the insurer to insist that the policy is void because it contains this statement, would be an act of bad faith and of the grossest injustice and dishonesty. And the reason for this is that the representation was not the statement of plaintiff, and that the defendant knew it was not when he made the contract; and that it was made by defendant, who procured plaintiff's signature thereto.

It is in precisely such cases as this that courts of law in modern times have introduced the doctrine of equitable estoppels, or, as it is sometimes called, estoppels in pais. The principle is that where one party has by his representations or his conduct induced the other party to a transaction to give him an advantage which it would be against equity and good conscience for him to assert, he would not in a court of justice be permitted to avail himself of that advantage. And although the cases to which this principle is to be applied are not as well defined as could be wished, the general doctrine is well understood and is applied by courts of law as well as equity where the technical advantage thus obtained is set up and relied on to defeat the ends of justice or establish a dishonest claim. It has been applied to the precise class of cases of the one before us in numerous well considered judgments by the courts in this country. *Plum v. Cataraugus Ins. Co.*, 18 N. York 392; *Rowley v. Empire Ins. Co.*, 36 New York 550; *Saving Bank v. Charter Oak Ins. Co.*, 31 Conn. 526; *Combs v. The Hannibal F. & M. Ins. Co.*, 43 Missouri 148.

Indeed, the doctrine is so well understood and so often enforced that, if in the transaction we are now considering, Ball, the insurance agent, who made out the application, had been in fact the underwriter of the policy, no one would doubt its applicability to the present case. Yet the proposition admits

of as little doubt that if Ball was the agent of the insurance company, and not of the plaintiff, in what he did in filling up the application, the company must be held to stand just as he would if he were the principal.

Although the very well considered brief of counsel for plaintiff in error takes no issue on this point, it is obvious that the soundness of the court's instructions must be tested mainly by the answer to be given to the question, Whose agent was Ball in filling up the application?

This question has been decided differently by courts of the highest respectability in cases precisely analogous to the present. It is not to be denied that the application, logically considered, is the work of the assured, and if left to himself or to such assistance as he might select, the person so selected would be his agent, and he alone would be responsible. On the other hand, it is well known, so well that no court would be justified in shutting its eyes to it, that insurance companies organized under laws of one State, and having in that State their principal business office, send these agents all over the land, with directions to solicit and procure applications for policies, furnishing them with printed arguments in favor of the value and necessity of life insurance, and of the special advantages of the corporation which the agent represents.

They pay these agents large commissions on the premiums thus obtained, and the policies are delivered at their hands to the assured. The agents are stimulated by letters and instructions to activity in procuring contracts, and the party who is in this manner induced to take out a policy rarely sees or knows anything about the company or its officers by whom it is issued, but looks to and relies upon the agent who has persuaded him to effect insurance as the full and complete representative of the company, in all that is said and done in making the contract. Has he not a right to so regard him?

It is quite true that the reports of judicial decisions are filled with the efforts of these companies, by their counsel, to establish the doctrine that they can do all this and yet limit their responsibility for the acts of these agents to the simple receipt of the premium and delivery of the policy, the argu-

ment being that, as to all other acts of the agent, he is the agent of the assured.

This proposition is not without support in some of the earlier decisions on the subject; and, at a time when insurance companies waited for parties to come to them to seek assurance, or to forward applications on their own motion, the doctrine had a reasonable foundation to rest upon. But to apply such a doctrine, in its full force, to the system of selling policies through agents, which we have described, would be a snare and a delusion, leading, as it has done in numerous instances, to the grossest frauds, of which the insurance corporations receive the benefits, and the parties supposing themselves insured are the victims.

The tendency of the modern decisions in this country is steadily in the opposite direction. The powers of the agent are *prima facie*, co-extensive with the business intrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals. *Beebe v. Hartford Ins. Co.*, 25 Conn. 251; *Lycoming Ins. Co. v. Shollenberg*, 8 Wright 259; *Beal v. Park Ins. Co.*, 16 Wisconsin 241; *Davenport v. Peoria Ins. Co.*, 17 Iowa 274. An insurance company, establishing a local agency, must be held responsible to the parties with whom they transact business for the acts and declarations of the agent, within the scope of his employment, as if they proceeded from the principal. *Saving Bank v. Charter Oak Ins. Co.*, 31 Conn. 517; *Horwitz v. Equitable Ins. Co.*, 40 Missouri 557; *Ayers v. Hartford Ins. Co.*, 17 Iowa 156; *Howard Ins. Co. v. Bruner*, 11 Harris 60.

In the fifth edition of *American Leading Cases*, 917, after a full consideration of the authorities, it is said that, "by the interested or officious zeal of the agents employed by the insurance companies in the wish to outbid each other and procure customers, they not unfrequently mislead the insured, by a false or erroneous statement of what the application should contain, or, taking the preparation of it into their own hands, procure his signature by an assurance that it is properly drawn, and will meet the requirements of the policy. The better opinion seems to be that, when this course is pursued, the description of the risk should, though nominally proceeding

from the insured, be regarded as the act of the insurers.
Rowly v. Empire Ins. Co., 36 New York 550.

The modern decisions fully sustain this proposition, and they seem to us founded in reason and justice, and meet our entire approval.

This principle does not admit oral testimony to vary or contradict that which is in writing, but it goes upon the idea that the writing offered in evidence was not the instrument of the party whose name is signed to it; that it was procured under such circumstances by the other side as estops that side from using it or relying on its contents—not that it may be contradicted by oral testimony, but that it may be shown by such testimony that it cannot be lawfully used against the party whose name is signed to it.

The judgment of the Circuit Court is affirmed.

The decisions of the Supreme Court of the United States, on questions of insurance and commercial law have always been treated with great respect and deference by the courts of the several States. And this not only from the ability that has generally characterized the judicial utterances of that tribunal, but from a recognition of the necessity of establishing, in that class of cases, a uniform rule. We, therefore, regard the foregoing case as peculiarly interesting, as being likely to settle the law upon a question that has hitherto divided the judicial mind, and to settle it too upon a basis of substantial justice.

It is not our purpose to examine in detail the cases that relate to this hitherto vexata quæstio, but to state in general terms the conflicting principles that have been applied by the courts in deciding them. On the one hand it is held that, notwithstanding the agent of the insurer may mislead the assured by an erroneous statement of what the application should contain, or procure his signature to an application drawn by himself on the assurance

that it is properly drawn, yet the insurance is invalidated by reason of any misstatement or omission which it was the duty of the assured, by the terms of the contract, to set forth. That he was misled by the agent of the insurer is held to be no answer. Indeed he is not permitted to show by parol that he was thus misled, because the policy itself is treated as the sole evidence of the contract. "A court of law" said FLETCHER J., in *Barrel v. Union Mut. F. Ins. Co.*, 7 Cush. 175, "must act on the agreement as it is; it cannot strike out or change any part, or add anything to it, so as to contradict or vary the agreement contained in the written instrument." And in the subsequent case of *Lee v. Howard Ins. Co.*, 3 Gray 583, where the application was signed by the assured, on the faith of an assurance from the agent who drew it up, that it was such a description of the premises as the provisions of the policy required, and contained all that was necessary to render the contract valid, the court held that the insurance was invalidated by the failure of the application to disclo-

the specific use for which one of the buildings was employed. Although being less hazardous than that actually set forth, it would not have occasioned an increase of premium if made known and had consequently been disregarded as immaterial by the agent.

‘Upon the most familiar principle of the law of evidence,” said BIGELOW, J., in delivering the opinion of the court, “all previous verbal agreements must be taken to be merged in the written agreement of the parties, made for the very purpose of embodying the terms of their contract, and designed to be the depository and proof of their final intention.” See also *Brown v. The Cattaraugus Co. Mut. Ins. Co.*, 18 N. Y. 385; *Jennings v. The Chenango Co. Mut. Ins. Co.*, 2 Denio 75; *Vandervorst v. The Columbian Ins. Co.*, 2 Cairns 155; *Holmes v. Charlestown Mut. F. Ins. Co.*, 10 Mich. 211.

On the other hand, it is held, in accordance with the doctrine of the case in the text, that the maxim *qui facit per alium facit per se* applies with peculiar force to the acts of insurance agents, and when such an agent, with full knowledge of all the facts, draws up the application, declares it satisfactory and induces the applicant for insurance to sign it, his principal is affected with the knowledge of the agent, and will be estopped to repudiate the contract on the ground of the latter’s unskillfulness, carelessness or fraud. In other words, although an application for insurance contains a false statement as to a material matter, the writing will nevertheless be held to express the contract between the parties, and neither will be permitted to insist that the contract is other than what the writing expresses, provided such false statement is chargeable to the agent of the company in making the survey and filling up the application, while acting within the line of his duty.

The Æna Ins. Co. v. Olmstead, 21 Mich. 246; *Rowley v. The Empire Ins. Co.*, 36 New York 285, 40 Id. 557; *Combs v. The Hannibal F. & M. Ins. Co.*, 43 Mo. 148; *Peoria M. & F. Ins. Co. v. Hall*, 12 Mich. 203; *Franklin v. The Atlantic F. Ins. Co.*, 42 Mo. 457; *The People’s Ins. Co. v. Spencer*, 3 P. F. Smith 353; *The Howard F. Ins. Co. v. Bruner*, 11 Harris 60; *The Perry Ins. Co. v. Stewart*, 7 Id. 45; *Meadowcraft v. Standard F. Ins. Co.*, 11 P. F. Smith 91; *Beal v. The Park F. Ins. Co.*, 16 Wis. 241; *The Bank v. The Charter Oak Ins. Co.*, 31 Conn. 517; *Plumb v. The Cattaraugus Ins. Co.*, 18 New York 392; *Goodall v. The Atlantic Ins. Co.*, 35 N. H. 328; *Ayres v. The Hartford Ins. Co.*, 17 Iowa 176; 21 Id. 173; *Cram v. The National Ins. Co.*, 16 Md. 269; *The Columbia Ins. Co. v. Cooper*, 14 Wright 331; *Geib v. Ins. Co.*, 1 Dillon, C. C. R. 443; see also *Ellis v. The Albany City F. Ins. Co.*, 4 Lansing 433.

In cases like the foregoing the insurer, either upon the ground of estoppel or waiver is prevented from taking advantage of the false or erroneous statements of the application, and is held to the performance of his contract.

In *Peoria M. & F. Ins. Co. v. Hall*, it was a condition of the policy that the keeping of gunpowder “without written permission in the policy,” should avoid the contract, but there was evidence that the agent knew it was kept at the time and was to be kept after the insurance, and that he assented to it, and induced the plaintiff to believe that it would make no difference. The court held that the company were chargeable with the knowledge of the agent; and receiving the premium and issuing the policy when possessed of such knowledge was in legal effect a waiver of the condition.

“The counsel for the plaintiff in error,” said the court, “insists that the printed condition was notice to the

assured of the agent's want of authority to assent to the keeping of gunpowder, etc., and that this assent could be given only by the company itself. This, at first view, would seem plausible, and might be sound, but for another principle which lies back of it and defeats its application. The principle to which we allude is, that notice to the agent is notice to his principal. The company must be regarded as knowing what he knew. If he knew that powder was kept at the time of the insurance, or to be kept during its continuance, the company must be regarded as having known it also. They had power to waive the condition, and by taking the premium and issuing the policy with such notice or knowledge, they must be regarded as having waived the condition which prohibited its keeping. It would be a gross fraud in the company to waive the premium for issuing a policy on which they did not intend to be liable, and which they intended to treat as void in case of loss." See to the same effect *People's Ins. Co., v. Spencer*, 3 P. F. Smith 353.

And the position of the insurer is not changed by reason of undisclosed instructions to the agent to consider himself in taking and forwarding applications as the agent of the applicant. *Beebe v. The Hartford Co. Mut. F. Ins. Co.* 25 Conn. 51; nor by a provision in his by-laws that the agent in performing these duties shall be deemed the agent of the applicant. *Masters v. Madison Co. Mut. Ins. Co.*, 11 Barb. 624. The tendency of the recent decisions is to hold the insurer bound by the acts of local agents whenever it can be done consistently with the evidence and rules of law. "The powers of the agent," in the language of Mr. Justice MILLER, "are *prima facie*, co-extensive with the business intrusted to his care, and will not be narrowed

by limitations not communicated to the person with whom he deals." And this is in strict accord with well settled principles. "When a person is employed in a particular department of business," said NELSON, C. J., in *Sanford v. Handy* 23 Wend. 260-266, "and is employed to do an act within his line, with *special restrictions*, then the general powers derivable from the nature of his ordinary employment will control the limitation; he will be held to possess such in the particular instance as his ordinary occupation fairly imports to the public." See also *Dromdorf v. Beardsley*, 23 Barb. 656-660; *Ellis v. The Albany City F. Ins. Co.* 4 Lansing 433.

But when the agent, by the express condition of the policy, is made the agent of the insured, and it is also a condition of the policy that the application shall be a warranty on the part of the insured, and the application contains a misstatement, this is a breach of the warranty; and it is held that it is no defense that the agent knew the real facts. By express contract he is made the agent of the insured, and hence it was his agent and not the agent of the insurer who knew the truth of the matter. *Abbott v. Shawmut Mut. F. Ins. Co.*, 3 Allen 213; *Mulrey v. same*, 4 Id. 116. See also *Shawmut Mut. F. Ins. Co. v. Stevens*, 9 Allen 332. On the other hand, in *Columbia Ins. Co. v. Cooper*, 14 Wright 331, where it was an express stipulation of the contract that any violation of the conditions upon which the insurance was effected should be construed as the act of the insured, and should render the policy void, it was held that such stipulation was not binding on the assured. The applicant, in that case had informed the agent that there were judgments against his property, but that he did not know whether they would bind the property proposed to be insured. The agent thought they

would not, and wrote down the answer accordingly. The policy, however, did not contain any express covenant of the assured, as in the preceding cases, that made his answers a *warranty*. He "was bound to answer in good faith," said Woodward, C. J., "and he did so. But notwithstanding the above recited condition he was not responsible for the blunders of the agent. If the agent returned that there were no incumbrances, when he had been informed there were judgments and a lease, he may have violated the 'conditions.' But no company has a right to select

and send out agents to solicit patronage and business for its benefit, and then to saddle their blunders upon its customers. If the assured combine with the agent to cheat the company, we protect the company (*Smith v. Ins. Co.*, 12 Harris 320); but if the assured has covenanted for nothing, and has been guilty of no misrepresentation, concealment or fraud, the company had better pay his loss than to attempt to make him responsible for the blunders of their own agent."

HENRY FLANDERS.
Phila., July, 1872.

Supreme Judicial Court of New Hampshire.

HILL v. SPEAR.

The validity of a contract is to be decided by the law of the place where it was made, unless it was agreed, either expressly or impliedly, that it should be performed elsewhere; in which case the general rule is, that the contract, as to its validity, nature, obligation, and interpretation, is to be governed by the law of the place of performance.

Contracts, valid by the law of the place where they are made, are generally valid everywhere, *jure gentium*, and by tacit consent. And if, in the place where the contract is made, the policy of the local law would enforce it, it will also be enforced in the jurisdiction to which a party may be compelled to resort for the application of a remedy for the violation of such contract.

An exception to this rule, however, consists in this: that no nation or State is bound to recognize or enforce any contracts which are injurious to its own interests or the welfare of its own people, or which are in fraud and violation of its own laws.

A man is presumed to know and understand not only the laws of the country wherein he dwells, but also those of the foreign country or State in which he transacts business.

The validity of a vendor's claim to recover the price of goods sold with knowledge that the purchaser intends to make an unlawful use of them, depends upon the circumstance whether or not the original vendor participated actively, to a greater or less extent, in the subsequent unlawful disposition of the goods; or, whether the expectation of advantage and profit to him, growing out of the unlawful disposition of the goods by the purchaser, entered into and constituted a part of the inducement and consideration of the original sale.

If such expectation of advantage to the vendor was an ingredient in the consideration for the original sale, or if the original vendor participated in the subsequent unlawful disposition of the goods, he cannot recover the price of them in our courts.

Mere belief on the part of the seller of goods that the purchaser buys for the purpose of carrying them into another State, to be there re-sold in violation of law, does not invalidate the sale.

The mere solicitation, by a dealer in liquors, of orders in the future for such goods, even though the person soliciting such orders may have had reason to believe, and did believe, that if such liquors should be ordered and purchased they would be re-sold by the purchaser in violation of law, is not such a circum-